THE HON'BLE SMT.JUSTICE T.MEENA KUMARI

AND

THE HON'BLE SRI JUSTICE P.LAKSHMANA REDDY

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WRIT PETITION No.16288 OF 2005

Dt: 09.09.2005

Between:

Philip Jacob, S/o.Andrew Jacob

Occ: Technician-I, O/o.SSE/C&W/SC

Secunderabad Division

South Central Railway

Secunderabad, S/o.Secunderabad … PETITIONER

AND

Union of India through Chairman

Railway Board, Ministry of Railways

Rail Bhawan, New Delhi – 110 001

and others … RESPONDENTS

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WRIT PETITION No.16288 OF 2005

ORDER: ***(per the Hon'ble Smt.Justice T.Meena Kumari)***

Heard.

This Writ Petition is filed by the petitioner-applicant to declare the Order dated 07.11.2003 in O.A.No.825 of 2002 on the file of the Central Administrative Tribunal, Hyderabad confirming the Order dated 26.06.2002 passed by the Divisional Railway Manager, Secunderabad Division, South Central Railway (respondent No.3 herein) as illegal and arbitrary and to set aside the same and consequently to direct the respondents to return the entire back wages amount retained by them which is payable to him during the period from 06.05.1991 till 11.04.1994 or in the alternative to direct the respondents to pay the remaining amount including leave encashment and other benefits with bank interest after deducting the alleged dues.

The above mentioned O.A. was filed by the petitioner challenging the Order dated 26.06.2002 passed by respondent No.3 and for a direction to the respondents to refund the amount recovered from his salary for the month of May, 2002.

The case of the petitioner is that while he was working as CF/HS/II at Secunderabad, he was allotted Railway Quarter No.548/7 RB-I at Chilkalguda by Order dated 14.12.1987 and he occupied the same on 07.01.1988. While so, he was transferred to Ramagundam on promotion as Fitter Gr.II vide Orders dated 25.03.1988 and on 22.06.1988, he sought permission by way of representation from the respondents to retain the said quarter since he was not allotted any quarter at Ramagundam and that he was given assurance by the 5th respondent that his transfer was only temporary and he will be brought back on transfer to Secunderabad within two or three months. While the matter stood thus, he was removed from service on 06.05.1991 and was reinstated into service with effect from 11.04.1994 and was posted at Ramagundam and later transferred back to Secunderabad in June, 1996. Since the punishment of removal from service imposed upon him was modified to that of 'Censure', it is the case of the petitioner that he is entitled to back wages for the period during which he was out of service and since the representation submitted by him claiming back wages was not considered by the respondents, he filed O.A before the Tribunal which was disposed of directing the respondents to consider his claim within a period of one month from the date of receipt of that Order. Alleging non-compliance of the Orders in the said O.A., he filed Contempt Petition. Therefore, according to the petitioner, the respondent-authorities in order to take revenge upon him passed orders dated 26.06.2002 for recovery of damage rent from the date of relief on transfer i.e., from 16.06.1988 till he vacates the said quarter at Secunderabad. In the said Order, it was mentioned that the arrears of damage rent recoverable from the petitioner for the period from 16.06.1988 to 30.04.2002 has been worked out to Rs.1,96,318/- apart from Rs.1,666/- per month being recovered with effect from May, 2002 vide regular salary bill. Aggrieved by the same, he filed the present O.A.

The respondents have contested the said O.A by filing a counter denying the claim of the petitioner of having submitted a representation to the respondents dated 22.06.1988 seeking permission for retention of the said quarter at Secunderabad. It is stated that the petitioner on his transfer from Secunderabad to Ramagundam was required to vacate the quarter at Secunderabad, as per the instructions of Railway

Board dated 17.12.1983 and 15.01.1990 and as per the said instructions, retention of Railway Quarters at the old station is permitted only for two months on normal licence fee and maximum for another six months on special licence fee. It is also stated by the respondents that as per para-17 of the instructions dated 15.01.1990, the allotment of quarter at the old station will be deemed to have been terminated automatically on expiry of the permissible period and thereafter, the employee shall be subjected to damage rent recovery and such recovery shall not be kept pending even if any appeal or representation is pending before the authorities. Even if it is accepted that a representation has been made by the petitioner on 22.06.1988, there is no scope under the Rules to give permission beyond the period of two months on normal rent and for a further period of six months on special licence fee and on expiry of the said permissible periods, damage rent has to be recovered and there is no scope for any relaxation by the respondents. Therefore, the allotment of the quarter at Secunderabad having been deemed as terminated in 1988 upon transfer of the petitioner, retention of the said quarter by him during his eight years stay at Ramagundam and thereafter further continuance in the quarters even after his return to Secunderabad is unauthorized and the petitioner is liable to all consequences provided under the Rules. It is further stated that Rules require recovery of damage rent in cases of unauthorized occupation without any exception and there is no scope to avoid such recovery.

The Tribunal after considering the rival contentions of both the parties and after going into the merits of the case, dismissed the O.A. observing that even if the contention of the petitioner is accepted that he has made a representation to the respondents for further retention of the quarter at Secunderabad beyond the permissible period of two months, it is not in dispute that the petitioner has not received any reply from the respondents granting him permission for retention of the quarter at Secunderabad upon his transfer to Ramagundam. Therefore, the Tribunal was of the view that the petitioner is occupying the quarter without any permission after the expiry of the permissible period of two months. The Tribunal relied upon a Full Bench Judgment of the Tribunal at Allahabad wherein it was held that it is open to the Railway Authorities to recover penal/damage rent by deducting the same from the salary of the railway servant and it would not be necessary to take resort to proceedings under Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

The above observations of the Tribunal, in our considered opinion does not suffer from any illegality or irregularity warranting interference by this Court in view of the fact that the petitioner's occupation of the railway quarter is unauthorized.

Under the circumstances, the Writ Petition is liable to be dismissed and is accordingly dismissed.

(T.MEENA KUMARI, J)

(P.LAKSHMANA REDDY, J)

Dt: 09.09.2005

bsv/lvl